

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
)

September 30, 2005

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SUMMARY

CTIA commends the state members of the Federal-State Joint Board on Universal Service (Joint Board) and their staff for putting forth proposals to reform the federal high-cost universal service mechanisms. Each of these proposals recognize that reforms to the high-cost universal service mechanisms are necessary to achieve the twin goals of facilitating sustainable facilities-based competition and ensuring that consumers in rural and high-cost areas have universal, affordable access to high-quality services. These proposals also acknowledge that universal service support should be no more than necessary to achieve these goals. Each of these plans include proposals intended to provide for sufficient, but not excessive support. To achieve these goals, each of the proposals would take steps to encourage and reward efficiency, eliminate arbitrary regulatory distinctions, and simplify administration.

Unfortunately, each of these plans includes proposals that would undermine the long-term goals of universal service and facilities-based competition. The proposals appear to endorse the concept of universal service mechanisms that encourage and reward efficiency, but would maintain “all you can eat” embedded cost support for certain categories of carriers. Consumers, who both pay for and are the only intended beneficiaries of universal service support, deserve better than a universal service system that continues to encourage and reward inefficiency. Although the proposals eliminate some regulatory distinctions (*e.g.*, between rural and non-rural incumbent local exchange carriers (LECs)), some of them create other regulatory distinctions (*e.g.*, between wireline and wireless eligible telecommunications carriers (ETCs)). In an increasingly technology diverse telecommunications marketplace in which there now are significantly more wireless subscribers than wireline switched access lines and wireless minutes of use are growing at an unprecedented rate, it no longer makes sense for policy-makers to support the maintenance of backward-looking, wireline-centric universal service mechanisms.

Moreover, while eliminating some administrative complexity in the current system by combining high-cost support mechanisms, all of the proposals support potentially unfettered state commission involvement in the distribution of federal high-cost universal service support.

Whatever changes are made to the underlying mechanisms, the FCC must ensure that universal service support continues to be distributed in both a competitively- and technologically-neutral manner, as required by the Act. That way, consumers, and not state or federal regulators, will determine who competes for and delivers services to them.

CTIA has developed short- and long-term proposals that will better achieve these goals. Under these proposals, the FCC would modify the existing high-cost mechanisms, while transitioning to a new high-cost mechanism for all eligible carriers. The ultimate result of such reform should be a simplified, unified support mechanism that replaces the five high-cost mechanisms currently in place. Under such a mechanism, support for all eligible carriers would be based purely on efficient, forward-looking economic costs of serving a geographic area.

On July 1, 2006, upon expiration of the five-year plan adopted in the *Rural Task Force Order*, the FCC should adopt the following short-term measures:

- Move all incumbent LECs that, along with their affiliates, have 50,000 or more access lines in a state, to support based on forward-looking economic costs. “Rural telephone companies” in non-contiguous states and territories (*e.g.*, Alaska and Hawaii) and those that have less than 50,000 access lines in a state would remain under embedded cost support, but would be required to combine their study areas within each state.
- Remove non-loop costs such as risk-related profits and Corporate Operations Expenses from the high-cost support mechanisms. Such costs should be recovered from customers, not universal service subsidies – especially in a competitive environment and when contribution resources are increasingly strained.
- Reduce the threshold to qualify for local switching support from 50,000 access lines in a state to a lower number and/or limit support to those incumbent LECs with higher than average switching costs.
- Place a freeze on further growth in embedded high-cost support while the FCC implements long-term reforms.

In the long-term, the FCC should – in stages – transition all eligible carriers to a single high-cost mechanism that calculates support based on forward-looking economic costs. In this proceeding, the Joint Board and the FCC should adopt rules setting firm deadlines for this transition. Under long-term reform, the FCC should:

- Transition all remaining incumbent LECs to a unified forward-looking high-cost support mechanism. This would replace the existing high-cost loop support, local switching support, and (the current) forward-looking mechanism.
- For universal service purposes, eliminate arbitrary and increasingly irrelevant interstate and intrastate cost separations and fold interstate common line support and interstate access support into a unified forward-looking high-cost support mechanism.
- Develop a high-cost mechanism that directs equal per-line support to both incumbent and competitive ETCs based on the costs of the most efficient technology in a selected area.

CTIA believes that these reforms are necessary to protect the long-term viability of universal service.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
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Federal-State Joint Board on Universal Service) CC Docket No. 96-45
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To: The Federal-State Joint Board

**COMMENTS OF CTIA - THE WIRELESS ASSOCIATION™
ON JOINT BOARD HIGH COST PROPOSALS**

CTIA – The Wireless Association™ (“CTIA”) submits the following comments in response to the Federal-State Joint Board on Universal Service’s (“Joint Board’s”) public notice seeking comment on four proposals to modify the Commission’s universal service support programs for high-cost areas served by rural incumbent LECs.¹ In the last round of comments in this proceeding, CTIA laid out a roadmap for reform of high-cost support in general and rural incumbent LEC high-cost support in particular.² As CTIA pointed out in its comments, consumers – the only intended beneficiaries of the universal service provisions of the Act – will benefit most from universal service mechanisms that encourage and reward efficiency, eliminate arbitrary regulatory distinctions, and simplify administration. Each of the proposals in the *Public Notice* include elements meant to achieve these goals.

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, FCC 05J-1 (rel. Aug. 17, 2005) (“*Public Notice*”).

² CTIA comments on *Rural Referral Public Notice*, CC Docket No. 96-45 (filed Oct. 15, 2004) (“CTIA comments”).

I. CTIA SUPPORTS PROPOSALS TO SIMPLIFY AND RATIONALIZE THE CURRENT HIGH-COST SUPPORT SYSTEMS

CTIA commends all of the proposals for recognizing the need for comprehensive reform and thinking about ways to streamline and rationalize the existing system, consistent with CTIA's call for "fundamental reforms to the FCC's high-cost support universal service mechanisms."³ For example, all of the proposals ultimately would collapse the overly complex array of five existing universal service mechanisms into a single mechanism.⁴ As CTIA has pointed out, the administrative complexity of the existing system adds unnecessary costs and provides opportunities for abuse. "Ultimately, the result of this administrative morass is a high-cost support system that may be 'explicit' in a technical (economic) sense, but certainly is not 'explicit' within the plain meaning of the word."⁵ Replacing the existing system with a unified high-cost support mechanism will help address this problem.

The Three-Stage Package and, in a sense, the Universal Service Endpoint Reform Plan ("USERP") both recognize the need to combine carriers' study areas in a given state.⁶ The artificial balkanization of carrier operations in a single state into multiple study areas creates opportunities for carriers to present themselves as smaller, and their costs higher, than their total statewide operations would reveal.⁷ CTIA therefore supports these plans' recognition of the need to combine carriers' study areas in each state. Once carriers' operations are combined,

³ CTIA comments at iii.

⁴ *See Public Notice.*

⁵ CTIA comments at 14.

⁶ *Public Notice*, App. B at 8; App. D at 21-22.

⁷ *See* CTIA comments at 9.

larger carriers should be transitioned, in the near term, to the non-rural high-cost support mechanism, based on forward-looking costs. This is consistent with, for example, the first stage of the Three-Stage Package, which calls for the combination of study areas owned by a single company in a state and moving all carriers serving 100,000 or more lines within a state to the non-rural, model-based support program.⁸

The Three-Stage Package and the Holistically Integrated Package (“HIP”) both wisely recognize that reform of the high-cost support system should eliminate the distinction between “rural” and “non-rural” carriers for purposes of determining support. As these proposals recognize, continued use of the “rural” and “non-rural” telephone company distinction to determine whether and how much support is directed to high-cost areas disserves consumers by directing too much support to some areas and too little to others. Although the Joint Board and the Commission have, until now, distinguished between “rural” and “non-rural” carriers in the computation of support, it is important to note that the Communications Act draws no such distinction for that purpose.⁹ The elimination of this distinction also is consistent with the computation of costs for all universal service recipients based on a forward-looking mechanism using the most efficient technology.¹⁰

⁸ *Public Notice*, App. B at 8.

⁹ *See* 47 U.S.C. § 254.

¹⁰ *See infra* section II.

II. CTIA SUPPORTS PROPOSALS TO INCLUDE INCENTIVES FOR EFFICIENCY IN THE UNIVERSAL SERVICE SYSTEM

In this proceeding, CTIA has pointed out the strong need to introduce incentives for efficiency into the universal service funding system.¹¹ The determination of support based on forward-looking economic costs above a rate benchmark is an important step in that direction.

A. Calculating Support Based on Forward-Looking Economic Costs Will Encourage and Reward Carrier Efficiency

The State Allocation Mechanism (“SAM”) and the Three-Stage Package both acknowledge the potential benefits of using a forward-looking cost methodology,¹² and the HIP is open to the possibility.¹³ The SAM specifically acknowledges the benefits of using a forward-looking cost methodology to determine supported costs based on “the most efficient technology.”¹⁴ The Joint Board and the Commission have agreed, going back at least to 1997, that “support based on embedded cost could jeopardize the provision of universal service” by providing “the wrong signals to potential entrants and existing carriers” and “lead[ing] to the subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.”¹⁵

The existing rural high-cost mechanism based on embedded costs has resulted in a bloated system that rewards those carriers with the highest cost per subscriber. This has resulted

¹¹ CTIA comments at 7-11, 19-20.

¹² *Public Notice*, App. A at 3-4; App. B at 8.

¹³ *Public Notice*, App. C at 15.

¹⁴ *Public Notice*, App. A at 3.

¹⁵ CTIA comments at 7 (quoting *Universal Service First Report & Order*, 12 FCC Rcd 8776, 8901, ¶ 228 (1997)).

in rural incumbent LEC costs that have increased rather than decreased over time despite industry-wide efficiency gains, advances in technology, and amortization of depreciated equipment. Between 2000 and 2003, the national average loop cost for rural incumbent LECs grew from approximately \$337 per loop per month to approximately \$378 per loop per month.¹⁶

The FCC has recognized that the use of a forward-looking cost mechanism, by contrast, “provides an objective measure of efficient costs” and thus provides “appropriate incentives for investment, innovation, and entry into the marketplace.”¹⁷ Use of forward-looking costs also would free all funding recipients – incumbents and competitors alike – from burdensome cost reporting obligations. This improved efficiency in the high-cost universal service system would inure to the benefit of all consumers, who both pay for and are the intended beneficiaries of support. Consumers, who ultimately pay for universal service, are entitled to a system that demands efficiency from fund recipients.

B. Rate Benchmarks Will Ensure that Universal Service Support Is Not Used To Subsidize Artificially Low End User Rates

Some of the proposals in the *Public Notice* advocate the use of a rate benchmark as a means of determining support. For example, the SAM explains that a rate benchmark “would establish an expectation that local consumers would be responsible for the costs of the network serving them,” taking account of considerations of affordability and comparability.¹⁸ Competitors and incumbents alike will become more efficient when exposed more to the

¹⁶ From National Exchange Carrier Association Annual Filings. For rate-of-return LECs, these increased costs also translate to higher intrastate and interstate access charges.

¹⁷ CTIA comments at 19 (citing *Universal Service First Report and Order*, 12 FCC Rcd at 8899).

¹⁸ *Public Notice*, App. A at 4.

rigors of the competitive marketplace. This only will occur if incumbent LECs recover more of their network costs from their own end-user customers. As the Three-Stage Package describes, a “national revenue benchmark would represent the local contribution to support of carriers costs expected of all local customers throughout the nation.”¹⁹

Under the current system, rural incumbent LECs often have local rates that are substantially below the average urban rate. In some cases, these excessively low rural incumbent LEC rates are approved by state commissions, but in many states, rural incumbent LEC rates are unregulated. Sprint has presented data showing basic residential rates charged by ten Ohio rural incumbent LECs ranging from \$4.05 to \$12.35 per month, compared to a nationwide average monthly urban residential rate of \$14.57.²⁰ Consumers in urban areas that contribute to the universal service program are effectively subsidizing rural consumers’ purchase of below-market services, which is contrary to the policy underlying Section 254(b)(3) of the Act that consumers in rural and high-cost areas have access to services at rates comparable to those in urban areas. There is no statutory or policy justification for requiring urban customers to support lower rural rates.²¹ As CTIA has argued in both the universal service and intercarrier compensation dockets, eligibility for high-cost support thus should be predicated on tariffed end user rates that are no lower than a level corresponding to the cost benchmark used to determine eligibility under the reformed high-cost support mechanism.

¹⁹ *Public Notice*, App. B at 11.

²⁰ Reply Comments of Sprint Corporation at 7, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Dec. 14, 2004).

²¹ To the extent that rural or high-cost areas may include low-income consumers, other universal service programs such as Lifeline and Link-Up are available to lower the cost of services for those customers. 47 C.F.R. §§ 54.400 *et seq.*

III. PROPOSALS THAT WOULD DISCRIMINATE AGAINST CERTAIN CLASSES OF CARRIERS WILL ONLY HARM CONSUMERS

As a significant net contributor to the federal universal service programs, the wireless industry strongly supports market driven measures to make the universal service fund more efficient. However, CTIA does not support any proposal to discriminate against wireless carriers in the receipt of high-cost universal service funding, which will only distort the competitive marketplace by sending the wrong signals to consumers for consumption and to competitors for market entry. Competitive markets work best when consumers, not regulators, decide what services to purchase from which providers. Although, as noted above, the proposals in the *Public Notice* contain many important and positive ideas for reform, CTIA cautions the Joint Board against presenting any recommendation that would discriminate against any class of carriers, such as wireless carriers. Such a proposal would be particularly harmful to consumers in rural, high-cost areas, where wireless network deployment is occurring, in part, because of competitively neutral access to high-cost universal service support. Rather, as discussed herein, CTIA supports mechanisms that target the right amount of support to high-cost areas, while reducing the need for support for both competitors and incumbents over time by encouraging and rewarding efficiency.

A. The Act Prohibits Universal Service Mechanisms That Discriminate on the Basis of Technology

Any proposals to give certain categories of carriers less support than others must be judged within the context of the Act, which demands “universal service mechanisms and rules” that “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly

favor nor disfavor one technology or another.”²² As the Rural Task Force noted during the course of its deliberations, “Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service.”²³ This concept was also reiterated in the *Ninth Report and Order*, when the Commission stated that “the same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers.”²⁴

The Courts also have ruled in support of nondiscrimination in the universal service context. In *Alenco Communications, Inc. v. FCC*, the United States Court of Appeals for the Fifth Circuit stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”²⁵ As the Fifth Circuit noted, the principle of competitive neutrality “is made necessary not only by the realities of competitive markets but also by statute.”²⁶

²² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (1997).

²³ Rural Task Force, White Paper 5: Competition and Universal Service, at 8 (rel. Sept. 2000), available at <http://www.wutc.wa.gov/rtf>.

²⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20479 (1999).

²⁵ 201 F.3d 608, 616 (5th Cir. 2000).

²⁶ *Id.*

B. Wireless ETCs Should Not Be Relegated to a Separate and Unequal High-Cost Fund

In spite of the clear mandates of the Act, the USERP proposal would segregate wireless ETCs into a separate and unequal universal service mechanism. The USERP proposal would exclude wireless ETCs from the mainstream high-cost fund and relegate them to a separate “Portability Fund.”²⁷ Under this proposal, wireless carriers would have access to less total support than other ETCs. Although there are now more wireless handsets than switched wireline access lines, the Portability Fund available to wireless carriers would be capped at \$1 billion, which is less than one quarter of the current high-cost fund.²⁸ The proposal also calls for the Portability Fund to sunset after five years, while support for wireline carriers that compete with wireless would continue indefinitely. The purposes for which Portability Fund support could be put would be limited to build-out expenses, while other ETCs could use support for maintenance of existing facilities and ongoing expenses for the provision of service.

The USERP appears to contemplate for wireless carriers a limited form of ETC status that is difficult to square with the statute. Section 254 specifies that, once designated as an ETC, a carrier shall be eligible to receive universal service support, with no distinctions contemplated

²⁷ *Public Notice*, Exhibit D at 26-27.

²⁸ According to data gathered by CTIA, the current number of wireless handsets in the United States exceeds 182 million. See CTIA Semi-Annual Wireless Industry Survey, at <http://files.ctia.org/pdf/CTIAYearend2004Survey.pdf> (“CTIA Industry Survey”). Based upon data available from the Universal Service Administrative Company, the current number of incumbent LEC working loops is approximately 173 million. See USAC, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2005*, App. HC05 – *High Cost Loop Support Projected by State by Study Area*, at <http://www.universalservice.org> (filed May 2, 2005). However, the number of wireline phone lines also has been estimated to be as low as 132 million. See Dennis Cauchon, *City, State, Cell Phone Taxes On The Rise*, USA TODAY, May 9, 2005, available at www.usatoday.com/money/perfi/taxes/2005-05-08-cellphone-taxes_x.htm.

among ETCs.²⁹ Further, the statute states that ETCs may use support for the “*provision, maintenance, and upgrading*” of the supported services and the facilities to provide them.³⁰ The Portability Fund proposal would read the first two permitted uses out of the law.

Moreover, as noted above, the telecommunications marketplace is growing more diverse with each passing day. By law, rural consumers are entitled to services that are “reasonably comparable” to those services available in urban areas. Urban consumers generally have access to high-quality wireless services from competing carriers, all of which are constantly improving coverage and deploying new technologies and service offerings. Making wireless carriers second-class ETCs will effectively make rural consumers second-class citizens in the wireless services marketplace.

C. Full Substitution Is Not an Appropriate Criterion for Determining the Availability of High-Cost Universal Service Support

The USERP proposal postulates that wireless carriers should be segregated into a separate and unequal high-cost fund, because “most customers do not yet consider wireless to be a full substitute” for wireline service.³¹ Although there are indications that consumers increasingly are substituting wireline service for wireless services (especially in the areas of long-distance calling and second lines), whether or not wireless services are a “full substitute” for fixed wireline services is not an appropriate criterion for giving less or no support to wireless carriers. The USERP is correct that wireless carriers and networks are different from wireline carriers and networks. In many instances, wireless carriers and the networks they utilize are less

²⁹ See 47 U.S.C. § 254(e).

³⁰ *Id.* (emphasis added).

³¹ *Public Notice*, App. D at 27.

costly than wireline networks. But, that is hardly a legitimate reason for penalizing wireless carriers and discouraging market entry by giving wireless carriers less high-cost universal service support than is available to wireline carriers.

The simple fact is consumers in both rural and urban areas increasingly want access to both wireline and wireless technologies. In light of today's increasingly technology diverse marketplace, policymakers must avoid wireline-centric universal service policies that penalize those customers that use wireless technologies. There now are more wireless phones in the United States than there are wireline switched access lines. Wireless minutes of use increased approximately 32.7 percent and exceeded one trillion minutes in 2004.³² Moreover, guided by the rigors of a vibrantly competitive marketplace, wireless carriers are aggressively responding to consumer demand for new and innovative products and services in both rural and urban markets. With the help of universal service funding and other Commission policies, wireless carriers are making significant investments in high-cost rural areas. Approximately 50.5 percent of rural households and 53.5 percent of urban households have wireless services.³³ As federal and state regulators have acknowledged, wireless carriers play a key role in expanding telephone services to those parts of the United States with little or no wireline telephone penetration.³⁴ The

³² See CTIA Industry Survey; see also CSFB US Equity Research, *Key Telecom Trends: Wireless Subs the Positive Surprise* (Apr. 29, 2005) ("CSFB Trends Report") (reporting faster wireless market expansion and stronger wireless data penetration than previously estimated).

³³ Comments of CTIA – The Wireless Association™, WT Docket No. 05-71, at 21 (filed Mar. 28, 2005); see also *id.* at 12-17 (describing wireless developments in rural markets).

³⁴ CTIA comments at 15-16; FCC Press Release, *Consumer & Governmental Affairs Bureau Reports on Status of 'Lands of Opportunity: Building Rural Connectivity'* (rel. July 8, 2004); *North Dakota PSC Launches Initiative to Expand Wireless Service in Rural Areas*, TR DAILY, July 27, 2004.

five Economic Areas (“EAs”) in the United States with the lowest population had an average wireless penetration rate of 46.51 percent in 2003.³⁵ Highly efficient wireless networks, therefore, are quickly becoming the norm, rather than the exception to wireline networks in both rural and non-rural areas.

The continued deployment of efficient and highly-desired mobile wireless services in high-cost, rural areas will be retarded – to the profound detriment of rural consumers – if regulators adopt policies that favor certain competitors over others in the rural marketplace. The Joint Board should ensure that any reform of the high-cost support mechanism provides the same per-line support to all ETCs, determined with reference to the most efficient technology.³⁶ This will minimize costs for consumers and avoid distorting the competitive marketplace.

D. The USERP Competitive Grant Idea Holds Some Promise

CTIA has long supported market-driven universal service mechanisms that encourage and reward efficiency. As the FCC has recognized “forward-looking economic cost best approximates the costs that would be incurred by an efficient carrier in the market.”³⁷ CTIA, therefore, has supported the transition to a single mechanism that calculates support based on the forward-looking costs of the most efficient technology. CTIA also supports other market-driven mechanisms that would reward efficiency, such as a system of competitive bidding (or reverse

³⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20696 (2004) (Table 3 comparing the wireless penetration rates of EAs 149, 126, 142, 112, and 145).

³⁶ *See also supra* section II.

³⁷ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8899 (1997) (“*First Universal Service Report and Order*”).

auctions) to determine high-cost support levels for both incumbents and competitors. To that end, something similar to the USERP's "competitive grant method" for awarding support in a particular area warrants further investigation. CTIA stresses that such a mechanism should be used to calculate support for both incumbent and competitive ETCs, not just for wireless competitors as proposed by USERP. Moreover, the Joint Board should consider the marketplace impact of making such support available to only one competitor. To avoid distorting the competitive marketplace, it may be appropriate to initially limit this proposal to truly unserved areas.

IV. THE COMMISSION MUST MAINTAIN AUTHORITY OVER THE ALLOCATION OF FEDERAL UNIVERSAL SERVICE SUPPORT

All of the proposals in the *Public Notice* would give state commissions the primary responsibility for allocating support among ETCs in the state. Although CTIA has supported states' authority to designate ETCs and has enormous faith in the states' commitment to universal service issues, the broad delegations contemplated in the proposals would leave the FCC without sufficient means to ensure the fulfillment of its statutory responsibilities, including ensuring reasonable comparability of rates and services between the states. Additionally, delegation to state commissions of the authority over distribution of universal service support would impose unnecessary administrative burdens on carriers, the state commissions and the FCC, without any corresponding benefits.

A. The Commission is Required Under Existing Legal Precedent to Carry Out the Mandates of Section 254

The proposals in the *Public Notice* would give state commissions the authority to determine which carriers receive funding, how much funding they receive, and where support is

targeted.³⁸ Statutory restrictions, however, prevent the FCC from ceding control to this extent. Section 254 imposes substantial obligations on the Commission – ultimately, for ensuring the preservation and advancement of universal service, including the availability of services that are “reasonably comparable” to those services provided in urban areas at rates that are “reasonably comparable” to rates charged for similar services in urban areas.³⁹

The Commission and the Courts have reaffirmed that these responsibilities fall ultimately upon the Commission. In its *First Universal Service Report and Order*, the Commission concluded that it “has the ultimate responsibility to effectuate section 254.”⁴⁰ The Commission held:

[T]he statutory scheme of section 254 demonstrates that the Commission is ultimately responsible for ensuring sufficient support mechanisms. ... [A]lthough section 254 anticipates a federal-state universal service partnership, section 254 grants the Commission primary responsibility for defining the parameters of universal service. Indeed, the recognition of this fact presumably led Congress to require Joint Board involvement in that Congress recognized that it was important for the Commission to consider the states’ recommendations because the regulations adopted inevitably would affect the states’ traditional universal service programs.⁴¹

Because of its interpretations of Congress’s intent, the Commission recognized in this decision that, “[a]lthough the states are independently obligated to ensure that support mechanisms are ‘specific, predictable, and sufficient’ ... there is no doubt that the Commission

³⁸ See *infra* nn. 46-47.

³⁹ 47 U.S.C. § 254(b)(3).

⁴⁰ *First Universal Service Report and Order*, 12 FCC Rcd at 9192.

⁴¹ *Id.* at 9197.

... is to establish in the first instance what services should be supported and what are the necessary mechanisms to do so.”⁴²

The courts, too, have affirmed the Commission’s responsibility in this regard. The Fifth Circuit held that Congress intended that the “difficult policy choices” regarding ensuring that the requirements of Section 254 are met would be left to the FCC.⁴³ The Tenth Circuit in *Qwest I* found that the FCC itself must provide for “the preservation and advancement of universal service” and cannot merely rely on the states to do so for it, stating that “the FCC may not simply assume that the states will act on their own to preserve and advance universal service.”⁴⁴

As these decisions make clear, a block-granting approach (absent comprehensive federal guidelines for allocation of support) would not enable the FCC to adequately meet its statutory duties. Although some of the proposals before the Commission would provide for a limited amount of FCC oversight,⁴⁵ the proposals leave the Commission with too little discretion to

⁴² *Id.* at 9193 (internal citations omitted).

⁴³ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000) (“*Alenco*”) (citing *Texas Off. of Pub. Util. Council v. FCC*, 183 F.3d 393, 411-12) (“*TOPUC I*”). Further, in its decision in the appeal of *TOPUC I* after remand, the Fifth Circuit summarized the findings of both *TOPUC I* and *Alenco*, stating that, since Section 254(b) is an ambiguous provision, the “lofty and expansive language” of the provision “reflect[s] congressional intent to delegate difficult policy choices to the Commission’s discretion.” *Texas Office of Pub. Util. Council v. FCC*, 265 F.3d 313, 321 (5th Cir. 2001) (“*TOPUC II*”) (citations omitted).

⁴⁴ *Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001) (“*Qwest I*”).

⁴⁵ The HIP, for example, recommends the greatest amount of FCC oversight, noting that “the FCC’s guidelines would address both how to determine what each state receives for the [state allocation mechanism], and, in general, how each state would allocate its distribution within the state.” *Public Notice*, App. C, at 15. Elements of this proposal, however, would not provide the FCC with enough discretion, such as the proposal’s recommendations that the states be the ultimate arbiter of how many carriers can receive funding in a rural area. The USERP, however, would leave the most discretion to the states. With the exception of four limitations spelled out by the plan, state allocations would be completely discretionary. *Id.*, App. D, at 24.

ensure that the responsibilities given to the FCC under the Act are fulfilled. For example, all the proposals would permit the states to determine how much federal funding is allocated to each ETC within the state.⁴⁶ Additionally, some of the proposals would permit states to determine how many carriers are funded in certain rural areas in the state.⁴⁷ If state commissions are given the discretion to determine which carriers in which areas of the state receive funding, the Commission simply cannot ensure the “preservation and advancement” of universal service, including reasonably comparable rates. States permitted to choose carriers, for example, could choose only one class of carrier (*e.g.*, wireless carriers), thereby denying universal service funding to the other classes of carriers in that state and impairing the availability of comparable services to those offered in urban areas. Congress’s intent, court precedent and the FCC’s own policy statements limit the FCC’s ability to delegate its authority under Section 254 to the states, and therefore CTIA opposes a block granting proposal.

If the Joint Board decides to recommend some form of block granting, however, the statute and precedent would require that the FCC ultimately remain responsible for ensuring compliance with Section 254. As such, the FCC would need to implement comprehensive guidelines and conduct regular reviews of the state processes to ensure that the policies

⁴⁶ *Public Notice*, App. A, at 3-4 (noting that the states would determine the distribution of funds to ETCs within the state, including making adjustments to those ETCs’ allocation on a case-by-case analysis); *id.*, App. B, at 12 (noting that the “difficult decisions on allocating funds to different carriers and areas within each state” would be handled by the state commission); *id.*, App. C, at 15-16 (noting that this proposal recommends some FCC oversight, but states would be given discretion to determine how many carriers are funded in rural areas and the level of funding received by each carrier); *id.*, App. D, at 24-25 (stating that except for a few limitations, states would have complete discretion regarding the distribution of funds to carriers).

⁴⁷ *Public Notice*, App. C, at 15 (the HIP permits states to choose how many carriers are funded in certain rural areas); *id.*, App. D, at 24 (the USERP would permit states to assign support only to certain carriers in certain study areas or exchanges).

embodied in Section 254, such as ensuring for reasonable comparability between the rates and services in urban and rural areas, are being met. To ensure that the states take action to achieve reasonable comparability, for example, the Tenth Circuit required that the FCC “undertake the responsibility to ensure that the states act.”⁴⁸ As such, the FCC was required to provide “some inducement,” such as a “‘carrot’ or ‘stick’” or “a binding cooperative agreement” to guarantee that the states implement the goals of universal service.⁴⁹ Specifically, the court suggested that the FCC could “condition a state’s receipt of federal funds upon the development of an adequate state program.”⁵⁰ Such an approach would be necessary as well if the Joint Board were to recommend a block-granting approach.

B. Administrative Complexities Weigh Against Recommending a State Block Granting Approach

Not only are there legal impediments to adopting a state block granting proposal, the Joint Board should consider the administrative burdens that such a plan would impose. Carriers already submit detailed cost and line count data to USAC for purposes of determining federal high-cost universal service support. Under the *Public Notice* proposals, carriers seeking universal funding also would be required to apply for and comply with regulations in over 50 different jurisdictions across the country. Such a regulatory burden certainly would be contrary to the deregulatory framework Congress established for wireless carriers.⁵¹ Moreover, a state

⁴⁸ *Qwest I*, 258 F.3d at 1204 (emphasis in original).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04-208, *Second Report and Order, Declaratory Ruling, and Second Further* (continued on next page)

block grant proposal would impose an enormous strain on the states themselves. Although many states currently administer their own intrastate universal service fund, states also would have the responsibility for making significant decisions regarding the allocation of federal universal service funding.

Moreover, assuming a state block grant plan was implemented and assuming that the FCC exercised the necessary oversight that would be required under the statute, the FCC would be saddled with overseeing 50 different state allocation programs and ensuring such programs comply with the Act. As CTIA describes below, there are less administratively complex ways to reform the current universal service system that can address many of the issues of concern raised in the various proposals.

V. CTIA’S PROPOSAL WILL ENSURE THAT UNIVERSAL SERVICE GOALS ARE MET FOR CONSUMERS IN HIGH-COST AREAS

CTIA believes that fundamental reforms to the existing mechanism are needed to achieve the universal service goals set forth in the Communications Act. In previous comments to the Joint Board, CTIA has set forth several actions that can be taken to modify the existing high-cost system, while transitioning to a new high-cost cost mechanism. CTIA’s proposed reforms will: (1) improve the operation of the high-cost support system; (2) ensure that eligible competitors continue to have competitively neutral access to high-cost support; and (3) decrease the need for universal service subsidies over time by encouraging and rewarding efficiency and better

Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6466 (2005) (“The pro-competitive, deregulatory framework for CMRS prescribed by Congress and implemented by the Commission has enabled wireless competition to flourish, with substantial benefits to consumers.”) (citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20601 (2004)).

targeting the right amount of support to high-cost areas.⁵² CTIA summarizes its proposal here for the Joint Board's convenience.

Specifically, CTIA recommends rationalizing the five current high-cost support mechanisms into a unified support mechanism. A single mechanism will reduce unnecessary costs and burdens associated with managing multiple mechanisms. Another way to simplify the current high-cost system is to transition all (or most) rural carriers to a forward-looking mechanism. As CTIA noted previously, a high-cost mechanism based on a forward-looking cost model will eliminate the need for detailed cost reporting.⁵³ Ultimately, CTIA envisions a reformed mechanism that provides support for all eligible carriers based purely on the efficient, forward-looking economic costs of serving a geographic area.⁵⁴

Additionally, CTIA has recommended that the FCC eliminate unnecessary and costly administrative layers by centralizing administration of the high-cost support mechanisms with USAC.⁵⁵ This would mean, for example, that USAC would replace NECA as a recipient of all necessary data for calculation of high-cost support. USAC also should take over responsibility from the FCC staff for managing day-to-day operations of the forward-looking model, since USAC is better suited to perform these administrative functions than the FCC.

Some of these suggested reforms would take place in the near term and others are long-term goals. In terms of short-term reforms, CTIA recommends that, on July 1, 2006, larger

⁵² CTIA comments at 17.

⁵³ *Id.* at 18.

⁵⁴ *Id.* at 21-22.

⁵⁵ *Id.* at 18-19.

incumbent LECs that, along with their affiliates, have 50,000 or more access lines in a state, should begin receiving support, if any, based on a forward-looking mechanism. Moving larger carriers to the model would affect a small percentage of rural incumbent LEC study areas, but would cover approximately 14 million or 65% of the total lines served by rural carriers.⁵⁶ Other short-term reforms proposed by CTIA are: updating the forward-looking model customer location, wire center locations, and road data;⁵⁷ removing non-loop costs, such as risk-related profits and Corporate Operations Expenses, from the high-cost loop support mechanism;⁵⁸ requiring incumbent LECs with less than 50,000 access lines in a study area to provide that they in fact have high average switching costs prior to receiving local switching support;⁵⁹ and freezing further growth in the embedded cost mechanisms.⁶⁰

CTIA also has proposed longer-term reform goals, including transitioning the remaining incumbent LECs to a single forward-looking mechanism. In order to ensure that support is more widely available, while maintaining or reducing the overall high-cost fund size, the FCC could eliminate statewide averaging and increase the benchmark from two standard deviations above

⁵⁶ See Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, at Appendix HC05 (filed Apr. 30, 2004). This estimate does not account for affiliated study areas, which would be combined for purposes of this transition.

⁵⁷ CTIA comments at 23.

⁵⁸ *Id.* at 23-24.

⁵⁹ *Id.* at 24.

⁶⁰ *Id.* at 24-25.

the national average to a higher number.⁶¹ The FCC should make sure the benchmarks chosen do not result in an increase to the overall size of the high-cost support mechanisms.⁶² Other long-term reforms include: eliminating arbitrary interstate and intrastate cost separations and folding interstate common line support and interstate access support into the unified forward-looking high-cost support mechanism;⁶³ and creating a system to ensure regular updates to the forward-looking mechanism to reflect the introduction of more efficient technologies.⁶⁴

In addition to the reforms that CTIA has proposed, it is open to other market-based proposals that would achieve the goals of universal service while improving upon the current inefficient high-cost universal service mechanism that does not target support to the areas where it is needed. As noted above, although the proposals before the Joint Board advocate important fundamental changes to the current high-cost system, the Joint Board should not recommend to the Commission any proposed change that fails to simplify the operation of the current high-cost system or imposes changes that would not be competitively neutral to all carriers eligible to receive universal service support or focused primarily on the telecommunications needs of rural consumers.

⁶¹ See Rural Task Force, White Paper 4, *Review of the FCC's Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies*, available at <http://www.wutc.wa.gov/rtf> (Sept. 2000), at 18.

⁶² Once all incumbent LECs are under the forward-looking mechanism, the FCC could eliminate section 54.305 of its rules, which discourages incumbent carriers from consolidating operations.

⁶³ CTIA comments at 25-26.

⁶⁴ *Id.* at 26

VI. CONCLUSION

CTIA commends the Joint Board for its willingness to consider comprehensive reform of the Commission's high-cost support mechanisms, which is sorely needed and long overdue. In undertaking to make recommendations for such reform, the Joint Board should carefully consider CTIA's proposals, submitted in its comments in the first round of this proceeding and summarized in the preceding section. The Joint Board also should keep paramount in its deliberations the needs of rural consumers in a time of rapid technological transformation.

Respectfully submitted,

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